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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.56 OF 2002

1. Shri Bhagwan Bajirao Bhargude)
Age 42 years, Occ. Advocate,)
residing at Lane No.1,)
Subhash Nagar, 486, Shukrawar)
Peth, Pune - 411 030.)

2. Shri Jagdish Pundlikrao Dhaytadak)
Age 40 years, Occ. Advocate,)
C/o. Siddharth Chambers,)
Erandwana, Pune - 411 004.)

3. Shri Vijay Pandurang Shewale,)
Age 55 years, Occ. Advocate,)
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4. Shri Suresh Balkrishan Gujarathi)
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5. Shri Ramkrishna G. Rane)
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6. Shri Anil Laxman Desai)
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Amritvan Complex, Ciba Road,)
Goregaon (E), Mumbai - 400 063.)

7. Shri Arvind J. Joshi,)
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Thane - 400 601.)

8. Shri Ashok S. Dhemare,)
adult, Occ. Advocate,)
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Apartments, Prem Auto,)
Kalyan (West), Dist. Thane.)

Versus

1. State of Maharashtra)

2. The Secretary,)
Revenue Department,)
Government of Maharashtra.)

3. The Secretary,)
Law and Judicial Department,)
Government of Maharashtra.)

ALONG WITH

WRIT PETITION NO.841 OF 2003

1. Gopal Narayan Dikshit)
residing at 691, Budhwar,)
Pune - 411 002.)

Versus

1. State of Maharashtra)

2. Chief Secretary,)
Mantralaya, Mumbai.)

3. Secretary,)
Revenue and Forests Department,)
Mantralaya, Mumbai.)

Shri A.V. Anturkar, advocate for the petitioner in Public Interest Litigation.

Shri G.J. Sabnis, advocate for the petitioner in Writ Petition.

Mr. G.R. Rege with Smt. S.A. Mudbidiri Advocate for the Intervenor in Public Interest Litigation.

Shri P.M. Patil, A.G.P. for the State in both the petitions.

CORAM: V.G. PALSHIKAR &
SMT. RANJANA DESAI, JJ.

DATED: 3RD SEPTEMBER, 2004.

JUDGMENT:- **(Per Smt. Ranjana Desai, J.)**

1. These two petitions challenge the validity of the

Maharashtra Land Revenue Code (Amendment) Act, 2002 (Maharashtra Act No.25) (for short, "the Amending Act"). PIL No.56 of 2002 is filed by senior advocates, practicing in Pune, in public interest, and Writ Petition No.841 of 2003 is filed by one Gopal Narayan Dikshit, who has filed a revision application under section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "the Tenancy Act") before the Maharashtra Revenue Tribunal (for short, "the Tribunal"). The said revision application is admitted on 24/7/2000 and is pending.

2. On 3/7/2002, Rule was issued on PIL No.56 of 2002. As an interim arrangement, the Divisional Commissioner was directed to entertain appeals/revisions/other proceedings in accordance with law. This court observed that the Divisional Commissioner would pass appropriate interim/interlocutory orders/directions without finally deciding them.

3. On 29/7/2003, this court directed the State to file affidavit stating whether the Divisional Commissioner as contemplated by the Amending Act, would be an I.A.S. Officer of a senior cadre, who shall decide the matters transferred to him all over the state; whether such officer shall be a person having specialised knowledge about the revenue matters and also the knowledge of law; whether the Government would be continuing the nomenclature of the Divisional Commissioner and whether a

judicial officer presently working or retired can be appointed to man that post so that the transfer is from judicial authority to judicial authority. No such affidavit is filed by the State.

4. The basic submission of Mr. Anthurkar and Mr. Rege, who are appearing for the petitioners and Intervener respectively in the PIL and Mr. Sabnis for the petitioners in Writ Petition No.841 of 2003 is that the Amending Act seeks to override the principle of separation of powers. They contended that the Tribunal had been invested with important powers. Insofar as the Tenancy Act is concerned, finality has been given to its orders and judgments and that finality could only be penetrated by filing a writ petition in this court. To replace the Tribunal by the Divisional Commissioner, who is an Executive Officer, would result in giving a go-bye to the principle of separation of judiciary from the executive. That would affect the inviolable basic structure of the Constitution and, therefore, the Amending Act must be struck down.

5. The learned counsel also contended that by abolishing the Revenue Tribunal and investing the Divisional Commissioner with judicial powers, the State has ignored the fact that in pursuance of section 296(2) of the Act of 1935, which sought to prevent entrusting judicial powers in the hands of executive officers, the Tribunal

was created. By the Amending Act, the State has reversed this arrangement. The learned counsel contended that assuming that the Divisional Commissioners could be entrusted with this work, on account of heavy workload and lack of proper infrastructure, they will not be able to carry out the task entrusted to them. They will not be in a position to cope up with the judicial work of the Tribunal.

6. The learned counsel contended that the appointments of the Presiding Officers of the Tribunal are made in consultation with the High Court. The Amending Act has taken away the said powers of the High Court. It has conferred judicial powers on the officer, who is not appointed in consultation with the High Court. Entrusting such vast powers in the Divisional Commissioner not appointed in consultation with the High Court is illegal.

7. The learned counsel also urged that the decision to abolish the Tribunal could not have been taken without the consultation of the High Court. Under Article 235 of the Constitution of India, it is the responsibility and the duty of the High Court to take care of subordinate Courts and Tribunals. Prior consultation with the High Court was necessary in case the Government wanted to abolish the Tribunal. The learned counsel contended that the reduction in the work can never be a ground to

entrust judicial work in the hands of Executive Officers. In support of their submissions, the learned counsel relied on the judgments of the Supreme Court as well as this court to which we shall soon advert.

8. In response to the petitions, the Section Officer, Revenue and Forests Department, Mantralaya has filed separate affidavits in both the petitions. In his affidavits, the Section Officer, Revenue and Forests Department, Mantralaya, Mumbai, has denied all the contentions raised by the petitioners and justified the abolition of the Tribunal. According to him, the Amending Act is perfectly legal. The basic submission of the State is found in paragraph 7 of the affidavit dated 13/8/2002, which reads thus:

> "With reference to Para No.14(i) of the Petition, I say that the powers of the Tribunal were strictly not the judicial powers because prior to the formation of the Tribunal those powers were vested in the quasi-judicial authorities. It is further submitted that as per the Modalities/Guidelines for appointment of President and Members of The Maharashtra Revenue Tribunal framed by the Respondent No.1 in consultation with this Hon'ble Court, hereto annexed and marked as

> Exhibit-4, on every bench of the Tribunal two members were required to be appointed. of these two members, one member each from the category of 'Revenue Officer' and 'Judicial Officer/Advocates' required to be appointed. Thus, it can be seen from the above position that the Tribunal consisted of Revenue Officers and Judicial Officers in equal proportion."

9. It is also stated in the affidavit that power to constitute a Tribunal is conferred by virtue of Article 323B of the Constitution of India on the State Legislature and when the power to create a Tribunal is vested in the State Legislature, it carries with it power to abolish the same. It is the exclusive domain of the State Legislature to enact state laws. We may note here that the Tribunal was not constituted under Article 323B of the Constitution as wrongly stated in the affidavit.

10. The same submissions have been reiterated by the learned A.P.P. appearing for the State.

11. Before we deal with the rival submissions, it is necessary to have a look at the history of the Tribunal. It would be advantageous to note its origin, the stages of its evolution and functions carried out by it. The Tribunal was first constituted on 1/4/1937 by the then

Governor of Bombay under the powers conferred on him by section 29 of the Government of India Act, 1935 (for short, "the Act of 1935"). Section 296(2) of the Act of 1935 provided that if in any province, jurisdiction to entertain appeals or revise decisions in revenue cases was immediately before the commencement of Part III of the Act of 1935 vested in the local Government, the Governor shall constitute a Tribunal to exercise the same jurisdiction until other provision in that behalf is made by the Act of the Provincial Legislature. In accordance with this provision, the Bombay Legislature passed the Bombay Revenue Tribunal Act, 1939 (for short, "the Act of 1939") providing for constitution of Revenue Tribunal for the province of Bombay. By section 3 thereof, power was conferred on the State Government to constitute a Tribunal. Section 4 thereof defined powers and functions of the Tribunal. The Tribunal was to exercise jurisdiction to entertain appeals and revision applications in revenue cases as was vested in the Government immediately before 1/4/1937. It appears that the whole object was to create a separate and independent Tribunal in causes between the State and the subject as the State could not become arbiter in its own cause. On the commencement of Bombay Revenue Tribunal Act, 1957 (for short, "the Act of 1957"), the Act of 1937 was repealed. The Act of 1957 was intended to constitute a Tribunal for the State of Bombay to invest with jurisdiction to entertain appeals and revise decisions in

certain cases; to abolish corresponding bodies in any part of the State and to provide for matters connected therewith. By the Bombay Re-organisation Act, 1960, the Bombay State was split into two States i.e. the State of Maharashtra and the State of Gujarat. By the Maharashtra Adoption (State Concurrent & Subjects) Order 1960, the Act of 1957 was amended and the Bombay Revenue Tribunal was named Maharashtra Revenue Tribunal. The Act of 1957 was repealed by section 336(d) of the Maharashtra Land Revenue Code, 1966 (for short, "the Code") and the existing provisions of the Act of 1957 were incorporated in Chapter 15 of the Code.

12. Chapter 15 of the Code, which is sought to be deleted by the Amending Act, pertains to the Tribunal. Section 315 thereof demarcates the jurisdiction of the Tribunal. Section 318 states that the Tribunal shall have powers of civil court. Section 313 lays down the practice and the procedure of the Tribunal.

13. The effect of deletion of Chapter 15 of the Code by the Amending Act is to abolish the Tribunal, which has so far been dealing with appeals and revisions as per section 315 of the Code and those arising out of certain Acts. It may be stated here that the Tribunal exercises appellate as well as revisional jurisdiction under various statutes like the Tenancy Act, the Bombay Public Trusts Act, etc. While deleting

Chapter 15 of the Code, the Amending Act has also made consequential changes in the rest of the Code. It is not necessary to refer to all the provisions of the Amending Act and the consequential changes in the Code because the net result of all these provisions is to replace the Tribunal by the Divisional Commissioner and give the Divisional Commissioner the primacy which the Tribunal had in the matters relating to land revenue and in respect of certain other Acts. We may only refer to section 14 of the Amending Act which states that reference to the Tribunal in any of the State enactments specified in the Schedule appended to it shall be construed as reference to the Divisional Commissioner of the concerned Division appointed under section 5 of the Code. In effect, therefore, the Amending Act amends the said State enactments also. The challenge is to the entrustment of powers in the hands of executive officers.

14. The Amending Act is preceded by the following:

> "WHEREAS it is observed that over the last few years the number of appeals filed in the State before the Maharashtra Revenue Tribunal under the Maharashtra Land Revenue Code, 1966 and other State enactments, is reduced to a considerable extent;
>
> AND WHEREAS, having regard to the said

fact, the Government of Maharashtra considers it expedient to abolish the Maharashtra Revenue Tribunal and to confer its powers to dispose of the appeals filed before the Tribunal under the Code and various enactments to the concerned Divisional Commissioner;

AND WHEREAS it is expedient further to amend the Maharashtra Land Revenue Code, 1966 for the purposes aforesaid; it is hereby enacted in the Fifty-third Year of the Republic of India as follows:-"

15. Therefore, the reason for taking this drastic step of abolishing the Tribunal is the alleged considerable reduction of the appeals filed in the State, before the Tribunal. That, there is reduction in the work of the Tribunal is disputed by the petitioners in Writ Petition No.841 of 2003 by giving some data of pending matters. That has been controverted by the State in its affidavit. It is not necessary for us to go into this factual aspect as we are not concerned with it. The question is assuming there is some reduction of work, whether for that reason, the Tribunal can be abolished and the powers of adjudication of the cases could be entrusted in the hands of Executive Officers. For that, it will be necessary to decide whether the Tribunal is a Judicial

Tribunal. If it is a Judicial Tribunal, would not the Amending Act violate the principle of separation of powers? The task of this court is to find answers for these questions.

16. Article 50 of the Constitution reads thus:

> "**Article 50: Separation of judiciary from executive:** The State shall take steps to separate the judiciary from the executive in the public service of the State."

Concept of separation of powers is a basic feature of the Constitution. There can be no debate over this. No enactment which tries to violate it can withstand the scrutiny of the court.

17. While tracing the origin of the Tribunal, we have already referred to section 296(2) of the Act of 1935. This section, so far as it is relevant for the present purpose, reads thus:

> "296-(1). No member of the Federal or a Provincial Legislature shall be a member of any Tribunal in British India having jurisdiction to entertain appeals or revise decisions in revenue cases.

> (2) If in any Province any such jurisdiction as aforesaid was, immediately before the commencement of Part III of this Act, vested in the Local Government, the Governor shall constitute a Tribunal, consisting of such person or persons as he, exercising his individual judgment, may think fit, to exercise the same jurisdiction until other provision in that behalf is made by Act of the Provincial Legislature."

18. The Statement of Objects and Reasons of the Act of 1939 by which the Tribunal was constituted refers to this section. The relevant paragraph reads thus:

> "Under sub-section (1) of section 296 of the Government of India Act, 1935, no member of a Provincial Legislature can be a member of any Tribunal having jurisdiction to entertain appeals or revise decisions in "revenue cases". Under sub-section (2) of section 296 of the Act a temporary Tribunal has been constituted since 1st April 1937 to exercise such jurisdiction. The object of the present Bill is to replace this temporary Tribunal by a permanent Tribunal."

19. It is clear from this paragraph that the Tribunal was created to prevent judicial power being entrusted in the hands of the members of Provincial Legislatures. Section 296(2) to which reference is made specifically states that if in any Province any such jurisdiction is vested in the Local Government before the commencement of Part III of the said Act, the Governor shall constitute a Tribunal to exercise the same jurisdiction until other provision is made in that behalf. Thus, the Tribunal was intended to prevent entrustment of judicial powers in the hands of officers of the Government/executive officers. The Amending Act intends reversing this. This, in our opinion, is not permissible for reasons which we shall now state.

20. In **Bhagwandas Motiram Marwari v. The Bombay Revenue Tribunal, Nagpur, B.L.R. LXI 1406**, this court was dealing with a petition under Articles 226 and 227 of the Constitution, for quashing of the order of the Bombay Revenue Tribunal, Nagpur, transferring an appeal preferred by the petitioner and pending before him to the Commissioner, Nagpur, for disposal. According to the Tribunal, by virtue of section 8 of the Bombay Commissioners of Divisions Act, an appeal of this kind had to be transferred to the Commissioner for disposal. The appeal in question arose out of an order made by the Sub-Divisional Officer upon an application made under

section 19 of the Berar Regulation of Agricultural Leases Act, 1951. Section 8 of the Bombay Commissioners of Divisions Act, read as under:

> "All proceedings including proceedings by way of appeals, revision or review pending under any existing law before the State Government or a Divisional Officer or Director of Local Authorities or any other officer or authority immediately before the commencement of this Act shall, where disposal of the proceedings falls within the purview of the powers and duties of the Commissioner, be transferred to the Commissioner for disposal according to law".

The Revenue Tribunal was not specifically mentioned in section 8 but, the Tribunal while relying upon an earlier decision in **Vishweshar Rao vs. State of Bombay** held that the word "authority" occurring in this section includes a Revenue Tribunal. While dealing with this question, this court came to a conclusion that the term "authority" cannot be deemed to include a Court or any other judicial tribunal. This court expressed that that term, as used in section 8, would not include a Tribunal like the Bombay Revenue Tribunal, which is entrusted with the duty of adjudicating upon the rights of persons judicially.

The following observations of this court are material for the purposes of the present case:

> "The quasi-judicial body or tribunal (that is, an administrative or executive body or tribunal entrusted with judicial functions) would certainly fall within the ambit of the word "authority". But, where the sole function of the tribunal is to adminster justice judicially, it cannot fall within the expression "authority." The Bombay Revenue Tribunal is not entrusted with any administrative work but is solely entrusted with the duty of deciding matters judicially, whether between an individual and an individual or between the State and an individual. It cannot be deemed to be performing quasi-judicial functions but must be regarded as performing purely judicial functions."

In this view of the matter, this court concluded that the appeal will have to be dealt with by the Revenue Tribunal itself and that its transfer to the Commissioner was erroneous. This judgment makes it clear that the Tribunal performs purely judicial functions.

21. The Maharashtra Land Revenue (Revenue Tribunal)

Rules, 1967, provide for qualifications of President of the Tribunal. It, inter alia, states that the President shall be a person who is or has been a judge of a High Court. This requirement indicates the importance of this post. Implicit in this is the requirement of such person being disciplined to uphold the dignity, integrity and independence of judiciary. Equally implicit is the competence, expertise and legal knowledge of such a person. If the Tribunal is abolished, in a given case, an appointee to the post of Divisional Commissioner may not be a law graduate. He may not have legal acumen. Vast experience cannot be a substitute for legal acumen. The decision of the State to replace the Tribunal, which under the rules is required to be headed, inter alia, by a person who is or has been a judge of a High Court, by an executive officer not only violates the principle of separation of powers enshrined in Article 50 of the Constitution, which is the basic feature of the Constitution but also dilutes the importance of the work the Tribunal has so far been carrying out.

22. The Bombay Revenue Tribunal Regulations, 1958 made under the Act of 1958 have continued to remain in force by virtue of section 329(2) and section 336 of the Code. These rules make detailed provisions for presentation, registration and admissions of appeals and applications, hearing and adjournment thereof and decisions or orders thereon. They contemplate notice to parties, procedure

in case of non-appearance of parties, restoration of appeals and applications, limitation, procedure for taking evidence, provision for adjournment, procedure in case of death of appellants or applicants or respondents, abatement and inspection, search, service of notices. Regulation 55 requires the Tribunal to follow provisions of Civil Procedure Code in matters not provided for in these regulations. This procedure leaves no doubt that the Tribunal is entrusted with the duty of adjudicating rights of persons judicially.

23. In this connection, we may also refer to a judgment of this court, which was confirmed by the Supreme Court. In **State vs. Labour Law Practitioners Association, 1987 Mh.L.J. 91**, this court was concerned with the validity of the notification of the State Government appointing the respondents, who were Assistant Commissioners of Labour as judges of the Labour Court. A declaration was sought that the amended provisions of the Industrial Disputes Act and Bombay Industrial Relations Act adding Assistant Commissioners of Labour to the categories of persons, who could be appointed as presiding officers of the labour court were void as being contrary to Article 234 of the Constitution of India. A direction was sought to the State Government to comply with the provision of Article 234 when appointing judges of the Labour Court. A learned single judge of this court held that the posts in the Labour Court were civil judicial posts and that

the posts were inferior to that of the District Judge so that Article 234 was attracted. The appointments of the respondents were quashed and the State was directed to comply with the provisions of Article 234 in the matter of appointment of Labour Court judges. In an appeal carried to the Division Bench, the Division Bench referred to the judgment of the Supreme Court in **Bharat Bank Ltd. v. Employees of the Bharat Bank Limited, Delhi, AIR 1950 SC 459**, where a passage from **Cooper vs. Wilson 1937 2 KB 309** was quoted and it was held that the Industrial Tribunal had all the necessary attributes of a court of justice. We may quote the said paragraph.

> "A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites:- (1) The presentation (not necessarily orally) or their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal argument by the parties, and (4) a decision which disposes of the whole matter

> by finding upon the facts in dispute and application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law. A quasijudicial decision equally presupposes an existing dispute between two or more parties and involves (1) and (2), but does not necessarily involve (3) and never involves (4). The place of (4) is in fact taken by administrative action, the character of which is determined by the Minister's free choice."

It was then held that what was said of the Industrial Tribunal in the **Bharat Bank's case (supra)** would in full measure apply to the Labour Court. The appointments of the judges to the Labour Courts must, therefore, be made under the provisions of Article 234. In the circumstances, the Division Bench dismissed the appeal.

24. The Special Leave Petition filed against this decision was dismissed by the Supreme Court in **State of Maharashtra v. Labour Law Practitioners Association & Ors. (1998) 2 SCC 688**. The Supreme Court referred to its judgment in **Chandra Mohan v. State of U.P., AIR 1966 SC 1987**. In that case, under the U.P. Higher Judicial Service Rules, "judicial officers" were eligible for appointment as District Judges and the expression was

meant to cover members of the executive department who discharged some revenue and magisterial duties also. The Supreme Court held that the Governor could not appoint as District Judges persons from the service other than the judicial service. A person, who is in the police, excise, revenue or such other services cannot be appointed as a District Judge. "Judicial service" as defined in Article 236 consists only of persons intended to fill up the posts of District Judges and other judicial posts and that is an exclusive service only consisting of judicial officers. The Supreme Court observed that the acceptance of the Government stand takes us to the pre-independence days and also cuts across the well-knit scheme of the Constitution providing for independence of the judiciary. 'Judicial service' was defined in exclusive terms as consisting only of judicial officers, discharging entirely judicial duties. It was observed that having provided for appointment to that service and having entrusted the control of the said service to the care of the High Court, the makers of the Constitution would not have conferred a blanket power on the Governor to appoint any person from any service as a District Judge.

25. In the ultimate analysis, the Supreme Court observed that the Constitutional Scheme under Chapter 6 of Part VI dealing with the "subordinate courts" shows the clear anxiety of the framers of the Constitution to preserve

the independence of the judiciary from the executive. No doubt, in this case, the court was concerned with judicial service and Article 234 of the Constitution but, the concept of separation of powers and independence of judiciary was stressed and the Supreme Court dismissed the Special Leave Petition.

26. If the Tribunal is performing purely judicial functions, if it has trappings of a court, then in our opinion, the decision of the State Government to abolish it and entrust its powers with the Divisional Commissioner, who is an executive officer is clearly violative of the principle of separation of powers and independence of judiciary emphasised by the Supreme Court in **Labour Law Practitioners' case (supra)**.

27. The Amending Act is also liable to be struck down on yet another ground. Under Article 227(1), every High Court has superintendence over all courts and Tribunals within its territorial jurisdiction, except those which are constituted under a law relating to armed forces. This includes the power to call returns from such courts, to make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts and prescribe forms in which books, entries and accounts are to be kept by the officers of such courts. The power of superintendence extends not only to administrative but even to the judicial superintendence over courts and

tribunals. The power and duty of the High Court under Article 227 of the Constitution is essentially to ensure that the Courts and Tribunals, inferior to the High Court, have done what they were required to do. This jurisdiction is intended to ensure that subordinate Courts and Tribunals act within the limits of their authority and according to law. This power is used for the purpose of keeping the subordinate Courts and Tribunals within the bounds of their authority. A person could assail the Tribunal's decision under Article 227 of the Constitution, if the Tribunal had acted arbitrarily or declined to do what is legally incumbent on it to do and refused to exercise jurisdiction vested in it by law or if the Tribunal had exceeded its jurisdiction, or assumed erroneous jurisdiction. The order of the Tribunal could also be challenged on the grounds that the Tribunal had acted against the principles of natural justice; that its findings are based on no evidence, or are otherwise perverse, or that there was an error of law apparent on the face of the record. The vital rights of the parties would now be determined by the Divisional Commissioner, who will not be amenable to the High Court's superintendence under Article 227 of the Constitution. The abolition of Tribunal ousts the power of superintendence of the High Court under Article 227 of the Constitution. The validity of the Amending Act can successfully be challenged on this ground.

28. We also find substance in the submissions of the learned counsel for the petitioners that the Amending Act does away with the consultation with the High Court in the matters of appointments. We have already referred to the rules, which require the President of the Tribunal to be a person, who is or has been a judge of the High Court. This requirement indicates that a person, who mans this post has to be a person of high calibre. He must be competent, well versed in law and must have integrity. Looking to the onerous and important task entrusted to the Tribunal, which is now sought to be entrusted to the Divisional Commissioner, we feel that loss of control of the High Court in the matter of appointments will have a deleterious effect on the administration of justice.

29. The affidavit filed on behalf of the State does not deal satisfactorily with any of the contentions raised by the petitioners. The fact that prior to the formation of the Tribunal these powers were vested in the quasi-judicial authority can never be an answer to entrustment of judicial powers of the Tribunal to the Divisional Commissioner. If as alleged by the respondents, there is reduction of work, the abolition of the Tribunal cannot be a solution for it. At the most, some Benches may be withdrawn for that purpose. The submissions of the learned counsel for the State fail to impress us.

30. In the ultimate analysis, therefore, we must record that the Amending Act is violative of the principle of separation of powers and independence of judiciary enshrined in Article 50 of the Constitution, which forms part of its basic structure. The Amending Act ousts the power of superintendence of the High Court under Article 227 of the Constitution. In the circumstances, the Amending Act will have to be declared as being illegal and ultravires the Constitution of India. In the view that we have taken, the Maharashtra Land Revenue Code (Amendment) Act, 2002 is declared as being illegal and ultravires the Constitution of India. The State of Maharashtra is directed to activate the Tribunal within a period of one month from today.

31. The petitions are disposed of accordingly.

(V.G. PALSHIKAR, J.)

(SMT. RANJANA DESAI, J.)